



புதுச்சேரி மாநில அரசிதழ்

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பொருளடக்கம்

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**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 52/Lab./AIL/T/2017,
Puducherry, dated 11th April 2017)

NOTIFICATION

Whereas, the Award in I.D.No. 27/2013, dated 27-2-2017 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the industrial dispute between the President, Centre of Indian Trade Union (CITU), Puducherry against the managements of M/s. Pondicherry Municipal Service Private Limited, over non-employment of 15 employees has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L., dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

E. VALLAVAN,
Commissioner of Labour-cum-Additional
Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL -CUM-
LABOUR COURT AT PUDUCHERRY**

Present: Thiru G. THANENDRAN, B.COM., M.L.,
Presiding Officer.

Friday, the 27th day of February 2017.

I.D. (L) No. 27/2013

The President, . . . Petitioner
Centre of Indian Trade Union (CITU),
Puducherry.

Versus

1. The Managing Director,
Puducherry Municipal Service,
Private Limited,
Puducherry-605 005.
2. The Managing Director,
Kivar Environ Private Limited,
Karnataka, India.
3. Puducherry Urban Development
Authority, Office of the Town and
Country Planning, Puducherry. . . Respondents

This industrial dispute coming on 25-1-2017 before me for final hearing in the presence of Thiru R.T.Shankar, Counsel for the petitioner and Thiru G. Krishnan, Counsel for the 1st and 2nd respondents and the 3rd respondent remained *ex parte*, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This industrial dispute has been referred as per the G.O.Rt. No. 64/AIL/Lab./J/2013, dated 13-5-2013 for adjudicating the following:-

(i) Whether the dispute raised by the CITU against the management of M/s. Pondicherry Municipal Service Private Limited, in respect of 15 employees *i.e.*, (1) Ravi, (2) D. Manimaran, (3) P. Rajan, (4) Vimalraj, (5) P. Annadurai, (6) M. Muthukumaran, (7) R. Arumugam, (8) S. Selvarasu, (9) B. Govindasamy, (10) R. Radhakrishnan, (11) M. Balamurugan, (12) S. Satthuru, (13) A. Rajendiran, (14) D. Ravi and (15) M. Sampath over their non-employment is justified ?

(ii) If justified, to what relief, the petitioner is entitled to ?

(iii) To compute the relief, if any awarded in terms of money, if it can be so computed?

2. The petitioner in his petition has stated as follows:-

The Kivar Environ Private Limited, the 2nd respondent herein and Puducherry Urban Development Authority (PUDA), the 3rd respondent herein, have formed a joint venture Company "Puducherry Municipal Services Private Limited" (PMSPL), the 1st respondent herein, under the Companies Act of 1956 to carry out the integrated solid waste management project at Puducherry and accordingly they signed the Concession Agreement on 18-10-2010. Based on the agreement, the work of the respondent management is to clean the wastages at places of Puducherry and Oulgaret Municipalities through tricycles and thereby, the workers to ride the tricycles were recruited by conducting job opportunity camp at 1st respondent management and appointment order for Drivers has been given to workers including petition mentioned workers by the 1st respondent management by obtaining their original Driving licence and that the workers were serving their service in a most excellent manner and that one year later, permanent order was

issued to the workers by the 1st respondent management, while being so, on 1-6-2012 the workers were orally instructed by the 1st respondent management that they were stopped from their service without giving any notice to them and pursuant to it, the petitioner union raised protest against the 1st respondent management and because of that, the 1st respondent management offer an settlement to the workers and some of the workers accepted the settlement offered by the 1st respondent management and that the petition mentioned workers and two more were not accepted the proposal of settlement by the 1st respondent management and they prayed for their job before Conciliation Officer and that 1st respondent management replied that Government of Puducherry. has not given any payment towards its work which has caused unprecedented financial crunch to the Company and the operations of the company came to a standstill on 23-4-2012 which position continues till date and the petitioner further stated that due to difference of opinion arose between 2nd respondent and 3rd respondent resulted in termination of workers by the 1st respondent management which is absolutely against the labour laws as well as natural justice and therefore, prays before this Court to pass an order for directing the respondent management to reinstate the petitioner with full back wages, continuity service and all other attendance benefits.

3. The 1st and 2nd respondents in their counter have stated as follows:-

The respondents denied the allegations contained in the claim statement of the petitioner and stated that 1st respondent has not yet received any payment from Government of Puducherry from its inception and not even a single bill of this respondent was cleared and it yet to receive the payments from the municipalities of Puducherry and Oulgaret which has caused unprecedented financial crunch to the Company and hence, the operations of the company came to a standstill on 25-4-2012 which position continues till date and that the question of refusal of employment as alleged by the petitioner would not arise and this allegation is unsustainable and stated further that the petitioner also aware that the management is not at all responsible for the present situation caused by the indifferent attitude of the Government and even in such a non-functional situation, the workmen were paid their April, 12 and May, 12 idle wages also and that the management, in order to high light the adverse situation to the workmen held a meeting with them on 11-6-2012 and the petition mentioned workmen have also

participated in the meeting alongwith other workmen and the entire factors right from non-payment of even a single bill of the company, financial crisis, inability to pay idle wages, and remote scope of revival were explained to the workmen in detail in a cordial atmosphere and in the said meeting it was made clear to the workmen, without any ambiguity, that it would not be possible to continue with the business activities without funds and without work to the huge work force and that stoppage of functioning of the company became inevitable and that subsequently majority of the workmen having realized the true position of the company have voluntarily came forward with their resignation and made full and final settlement of their accounts. This petition mentioned workmen have also came forward to submit their resignation but demanded payment of exorbitant amount towards their full and final settlement of accounts and having failed in their unfair attempt they have raised this industrial dispute on false and imaginary grounds and further stated that the 1st respondent has denied employment to the workmen is totally false and baseless and was created by an after thought for the purpose of making untenable claim against the respondents 1 and 2, and claiming reinstatement with back wages on such false grounds is wholly misconceived and that the petitioner workmen were not terminated or retrenched much less denied employment and hence, the question of reinstatement with back wages did not and could not arise and that the 1st respondent company ceased to function since 25-4-2012 due to circumstances beyond its control and no business transactions or activities had been carried out since then to the knowledge of the petitioner and claiming reinstatement with back wages from a non functioning company is totally unrealistic and incongruous and prays this Court to dismiss the petition.

4. Despite of service of notice to the 3rd respondent and though appeared through Counsel, he has failed to file the counter and remains *ex parte*.

5. On the side of the petitioner, PW1. was examined and Ex.P1 to Ex.P20 were marked. On the side of the respondent, RW1. was examined and Ex.R1 to Ex.R3 were marked.

6. *The point for consideration is:*

Whether the industrial dispute can be allowed?

7. Heard both sides. It is the case of the petitioner union that the 1st respondent, Puducherry Municipal Services Private Limited have been formed by the joint venture of 2nd and 3rd respondent, the Kivar Environ

Private Limited and Puducherry Urban Development Authority and that they have appointed the members of the petitioner union as Drivers to drive the Auto Tipper by the 1st respondent Company on 21-2-2011 and the workers of the petitioner union were stopped from their work on 1-6-2012 without giving any notice to them and thereafter, the union raised the protest against the 1st respondent and for which the 1st respondent offers a settlement to the workers and some of the workers accepted the settlement offered by the 1st respondent and that difference of opinion arose between the 2nd respondent and the 3rd respondent resulted in termination of workers by the 1st respondent which is against the Labour laws and prays for reinstatement with full back wages.

8. On the other hand, the respondents have denied the allegations of the petitioner's union stating that the 1st respondent has not received any payment from the Puducherry Urban Development Authority from the inception of the company and no amount was given by the Puducherry Urban Development Authority as agreed by them and no amount has been given by the Municipalities of Puducherry and Oulgaret which has caused unprecedented financial crunch and hence operations of the company came to a standstill and that even such circumstances of non-functional situation, the workmen were paid idle wages for April, 2012 and May, 2012 and that the 1st respondent has held meeting on 11-6-2012 and it was informed by the company that right from the inception of company no single bill payment was made by the Municipalities and for which the work were being done by the employees and inability to pay idle wages, remote scope of revival were explained to the workers in detail in a cordial atmosphere in the meeting and that it was also informed that it would not be possible to continue the activities without funds and without work to the huge work force and that stoppage of functioning of the company became inevitable and majority of the workers having realized the true position of the company have voluntarily came forward with their resignation and made full and final settlement of their accounts and that petitioner union members have also come forward to submit their resignation but demanded payment of exorbitant amount towards their full and final settlement and that therefore the 1st respondent has denied the employment to the workmen as stated by the petitioner and that therefore claiming reinstatement with back wages on such false grounds is wholly misconceived and that petitioner union members have not terminated or retrenched much less denied employment since the respondent company ceased to function from 25-4-2012 due to circumstances beyond its control and no business transactions or activities had been carried out.

9. To prove its case, the petitioner union has examined one R. Radhakrishnan as PW.1 and in support of his oral evidence, Ex.P1 to Ex.P20 were marked. Ex.P1 to Ex.P15 would reveal the fact that the members of the petitioner union have been appointed as Drivers of the Auto Tipper by the 1st respondent on 21-2-2011 and that the members of the petitioner union and the 1st respondent have entered into the employment agreement on 25-2-2011 and subsequently confirmation order was given to the petitioner union members by the 1st respondent on 1-10-2011. Ex.P16 would evident that there was some protest made by the union on 25-9-2012. Ex.P17 would reveal the fact that petitioner union has raised a industrial dispute before the Conciliation Officer on 21-8-2012. Ex.P18 would evident that on 30-7-2012, the 1st respondent company made a submission before the Labour Officer (Conciliation) admitting the fact that these employees have been working under them. Ex.P19 is the failure report of the Conciliation Officer to the Secretary to Government (Labour), Puducherry on 4-4-2013 which discloses that members of the petitioner union asked for reinstatement with the 1st respondent, the reference as well as the failure report have been served to the 1st respondent and the President of the Petitioner's union. Ex.P20 is the reference sent by the Government to this Court.

10. The 1st and 2nd respondents have examined S. Vaitinadan as RW.I and Ex.R1 to Ex.R3 were marked. Ex.R1 is the the resolution passed by the 2nd respondent company in a meeting held on 17-10-2014 to give evidence to authorizing one Vaitinadan to appear and act on behalf of the company who has been examined as RW.1. Ex.R2 is the copy of Arbitration Petition filed before the Hon'ble High Court of Judicature at Madras. Ex.R3 is the copy of the Advocate Notice it is the evidence of the RW.1 that 2nd respondent Kivar Environ Private Limited and the 3rd respondent, Puducherry Urban Development Authority have formed a joint venture Company to carry out the integrated solid waste management project for the urban Agglomeration of Puducherry in the name and style of the 1st respondent "Puducherry Municipal Services Private Limited" and that they signed the agreement on 18-10-2010 and that it is also admitted by them that the members of the petitioner union are the workers of them and they have been serving as Drivers of auto tipper at the 1st respondent company and it is the only contention of the 1st and 2nd respondent that they could not receive any payment from the Puducherry Urban Development Authority from its inception and not even a single bill of the respondent was cleared by the Puducherry

Urban Development Authority and it yet to receive the payments from the municipalities of Puducherry and Oulgaret which caused financial crisis to the 1st respondent company and they could not do the business transaction of the 1st respondent company from 25-4-2012. It is the further evidence of RW.1 that they conducted a meeting on 11-6-2012 and the workers have been informed regarding non payment of the bill of the company by the Government/Urban Development Authority, financial crisis, inability to pay idle wages and remote scope of revival were explained to the workmen in detail in a cordial atmosphere and also it would not be possible to continue the business activities without funds and majority of the workmen have resigned from the company and made full and final settlement of their accounts and that they have been paid the idle wages for April, 2012 and May, 2012 including the petitioners.

11. The documents and evidence of both PW.1 and RW.1 would go to show that no documents are filed by them to prove the fact that 3rd respondent has entered into contract with 1st and 2nd respondents. The reference also does not disclose whether there is any connection between the 2nd and 3rd respondents with the 1st respondent. Admittedly, though the 1st and 2nd respondents have held a meeting between the workmen and the management and the workers have been paid idle wages, it is a clear fact that they have not given statutory notice for the closure of the business or to give any notice for retrenchment and therefore, it is clear that the 1st respondent has failed to give statutory notice for the closure of business and the action of the 1st and 2nd respondents regarding closure of business and non-employment of the workmen is against law and not as per the procedure laid down under section 25F of the Industrial Disputes Act.

12. Absolutely, there is no evidence that whether 3rd respondent Urban Development Authority, Puducherry has entered any contract with the 1st and 2nd respondents and to prove the same nothing is placed before this Court to construe that joint venture was created. Though, the petitioner union impleaded the Puducherry Urban Development Authority as 3rd respondent, no document is filed either by the petitioner union or by the 1st and 2nd respondents to prove the fact that 3rd respondent have been entered into the contract with the 2nd respondent. Though, the petitioner union and the 1st and 2nd respondents have stated that there was a contract between the 2nd respondent and 3rd respondent to carry out the integrated solid waste management project for the

Urban Agglomeration of Puducherry and formed the 1st respondent and signed the Concession Agreement on 18-10-2010, no such contract or agreement is filed before this Court connecting the 3rd respondent, Puducherry Urban Development Authority with the employees and furthermore, the pleadings of the petitioner union is very silent regarding the terms and conditions of the contract laid to have been made between the 2nd and 3rd respondent. Furthermore, the petitioner union does not claim that the contract is sham and nominal and that therefore, the relief against the 3rd respondent does not arise and furthermore, the petition as well as claim statement is very silent, against whom the reliefs are asked for by the petitioner union. However, the 2nd respondent has admitted the fact that 1st respondent company is belonged to them and the members of the petitioner's union were working under them and they have been given non-employment from May, 2012 without giving any statutory notice for the closure of business and hence the closure of the business of the company is illegal and that therefore, the dispute raised by the petitioner union against the management of M/s. Pondicherry Municipal Service Private Limited, in respect of 15 employees over their non-employment is justified.

13. Since, it is decided that the dispute raised by the petitioner union is justified, it is to be seen that members of the petitioner union are entitled for the order of reinstatement with back wages against the 1st and 2nd respondent before granting any relief of reinstatement, the Court has to consider many relevant factors such as :

- * Source of Employment.
- * Qualification of Workers.
- * Length of Service
- * Availability of Post, *etc.*,

In this case, Admittedly the 1st respondent company has appointed the members of the union as Drivers and functioning only for 14 months and subsequently it could not do its business and stopped its work in the month of June, 2012 due to the financial crisis and held a meeting with the workmen and orally announced the settlement but, it is failed to issue proper notice for a closure of business as a procedure laid down under section 25 of the Industrial Disputes Act and therefore, since the 1st respondent company is in financial crisis, the union members cannot be reinstated in the 1st respondent company. However, the 2nd respondent admits that they have formed the 1st respondent

company and they have entered into the agreement with the 3rd respondent municipality, alone are liable to compensate the members of the petitioner union since they have not properly issued the closure notice of the 1st respondent company to its workmen as stated by the Act.

14. It is brought to the knowledge of the Court that 2nd respondent company alone has formed the 1st respondent company and it closed the 1st respondent company without following the procedure laid down under section 25F of the Industrial Disputes Act and the members of the petitioner union were appointed at the 1st respondent company and have served for a period of 14 months without any mistakes committed by them. Hence, considering the length of the extraordinary services of the members of the petitioner union and the unceremonious act of the company in closing down the business of the 1st respondent and considering the appointment and regularization order passed by the 1st respondent, it will be appropriate to pass an order of reinstatement in the 2nd respondent company to the petitioners and that therefore, to that effect, the industrial dispute is to be allowed. The respondents appeared before this Court and has not proved any misconduct of the petitioners and as the closure is illegal and the petitioners suffered great injuries monetarily along with their family members. Furthermore, on perusal of evidence of P.W.1, it is learnt to this Court that the petitioner have not at all stated why they have not joined in any other establishments as Drivers after the closure of the business of the 1st respondent and that therefore, though, the petitioner have entitled for reinstatement in the 2nd respondent company since the 1st respondent company was closed due to the financial crisis, they do not entitle for the relief of full back wages as claimed by them. However, considering the facts and circumstances of this case, this industrial dispute is partly allowed and the petitioner is entitled for the reinstatement with 20% back wages.

15. In the result,

(i) the industrial dispute raised by the petitioner is justified and it is partly allowed against the 1st and 2nd respondent and dismissed against the 3rd respondent,

(ii) the 2nd respondent, the Managing Director, Kivar Environ Private Limited is directed to reinstate the petitioners mentioned in the reference within one month, and

(iii) the 2nd respondent is also directed to pay 20% of back wages from the closure of business till the date of Award to the petitioners mentioned in the reference.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the Open Court on this the 27th day of February, 2017.

G. THANENDRAN,

Presiding Officer, Industrial Tribunal-cum-Labour Court, Puducherry.

—————

List of petitioner's witness:

PW.1 — 2-2-2016—R. Radhakrishnan

List of petitioner's exhibits:

Ex.P1 — Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.1, dated 1-10-2011.

Ex.P2 — Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.2, dated 1-10-2011.

Ex.P3 — Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.3, dated 1-10-2011.

Ex.P4 — Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.4, dated 1-10-2011.

Ex.P5 — Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.5, dated 1-10-2011.

Ex.P6 — Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.6, dated 1-10-2011.

Ex.P7 — Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.7, dated 1-10-2011.

Ex.P8 — Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.8, dated 9-2-2011.

Ex.P9 — Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.9, dated 1-10-2011.

- Ex.P10— Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.10, dated 15-6-2011.
- Ex.P11— Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No. 11.
- Ex.P12— Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.12, dated 28-9-2011.
- Ex.P13— Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.13, dated 11-5-2011.
- Ex.P14— Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.14, dated 1-10-2011.
- Ex.P15— Copy of Appointment order and confirmation order issued by the 1st respondent to the petitioner No.15, dated 1-10-2011.
- Ex.P16— Copy of Newspaper collections regarding protest made by the union, dated 25-9-2012.

- Ex.P17— Copy of letter sent by the petitioner union to the Labour Department, dated 21-8-2012.
- Ex.P18— Copy of reply letter submitted by the respondent management before Conciliation Officer, dated 30-7-2012.
- Ex.P19— Conciliation Failure Report, dated 4-4-2013.
- Ex.P20— Reference letter by the Labour Department, Government of Puducherry, dated 13-5-2013.

List of respondent's witness:

RW.1 — 24-2-2016 — S. Vaitinadan

List of respondent's exhibits:

- Ex.R1 — Copy of the resolution passed by 2nd respondent company, dated 17-10-2014.
- Ex.R2 — Copy of Arbitration Petition in O.P. No. 127 of 2013 on the file of the Hon'ble High Court of Judicature at Madras.
- Ex.R3 — Copy of the Notice issued by the counsel for 1st respondent company to the counsel for 3rd respondent.

G. THANENDRAN,
Presiding Officer, Industrial Tribunal-cum-Labour Court, Puducherry.

புதுச்சேரி அரசு

மாவட்ட சார்பு ஆட்சியர் (வருவாய்) அலுவலகம்

எண் 3933/மாதுஆ/வி5/மறு ஒப்படை/2017.

அறிவிப்பு

[புதுச்சேரி நில மானிய விதி 1975, விதி 60(iii)-ன் கீழ்]

புதுச்சேரி அரசால் படிவம்-1 ல் காணப்படும் நபர்களுடைய ஒப்படை செய்யப்பட்ட இடத்தில் தாங்கள் வீடு கட்டாமலோ அல்லது குடியிருக்காமலோ இருப்பதன் மூலம் தங்களுக்கு வழங்கப்பட்ட நில ஒப்படை ஆணையில் காணப்படும் நிபந்தனை (2)-ஐ நீங்கள் கடைபிடிக்காததை அறியவும்.

வரிசை எண்	ஒப்படை பெற்றவரின் பெயர் மற்றும் முகவரி	மறு அளவை எண்	நிலத்தின் பரப்பளவு	நில ஒப்படை ஆணை எண்
(1)	(2)	(3)	(4)	(5)

H. A. Ca.

25-கோவில்பத்து வருவாய் கிராமம்

1	குமார், த/பெ. மாரிமுத்து	C/9/13/11	0	00	45	87/04-05
2	மல்லிகா, க/பெ. பக்கிரிசாமி	C/9/13/28	0	00	46	90/04-05